A. W. RUTTER, JR.

IBLA 88-175 Decided September 14, 1988

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, deeming a simultaneous oil and gas lease application unacceptable. W-108135.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

A simultaneous oil and gas lease application is properly deemed unacceptable where the applicant's identification number is not entered on Part B of the application.

APPEARANCES: Dale E. Zimmerman, Esq., Washington, D.C., for appellant; Lowell L. Madsen, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

A. W. Rutter and his son, A. W. Rutter, Jr., both had filed Part A of the automated simultaneous oil and gas lease application before the October 1987 filing, each with his own identification number. When A. W. Rutter, Jr., provided his father filing assistance for that filing, he inadvertently entered his own identification number, and darkened the corresponding circles, on Part B of the application, rather than his father's. Because A. W. Rutter, Jr., had a Part A on file, the computer recognized his identification number, and his father's Part B was automatically processed and selected for parcel WY-666 even though the name on Part B of the application did not correspond to the identification number. When BLM was preparing to notify the successful applicant, however, it appeared that the identification number did not correspond with the applicant, A. W. Rutter. Because 43 CFR 3112.2-1(e) requires an applicant to enter his social security (or other) number on the application, the Wyoming State Office of the Bureau of Land Management (BLM) issued a decision deeming the application unacceptable. BLM's December 3, 1987, decision cited 43 CFR 3112.3(a)(2), which provides that "[a]ny Part B application form shall be deemed unacceptable and a copy returned if, in the opinion of the authorized officer, it * * * [i]s received in an incomplete state or prepared in an improper manner that prevents its automated processing." A. W. Rutter, Jr., has appealed the decision as the executor of his father's estate.

Appellant argues that his mistake is similar to the "mismatches" between the identification numbers on Part A and Part B that have been held may not serve as the basis for rejecting an oil and gas application on the authority of Conway v. Watt, 717 F.2d 512 (10th Cir. 1983) (applicant's failure to date a drawing entry card held "a de minimis, a non-substantive error" that cannot be "a per se disqualification"). In Rocky Mountain Exploration Co. v. United States Department of the Interior, No. C84-0033-B (Order on Motions for Summary Judgment, Nov. 20, 1984), the U.S. District Court for the District of Wyoming reversed the Board's decision affirming BLM's rejection of an application where the applicant transposed two numbers when filling in the identification number on Part B of his application. See Rocky Mountain Exploration Co., 77 IBLA 15 (1983). In Newman Partnership v. William P. Clark, No. C84-249-K (Order Granting Plaintiff's Motion for Summary Judgment (with Findings), Nov. 21, 1984), the same court reversed the Board's decision affirming BLM's rejection of an application where the applicant had written his identification number correctly on Part B of his application but darkened two incorrect circles. See Newman Partnership, 79 IBLA 281 (1984). In Rocky Mountain the court observed that the Department had "failed to show that the transposition error caused any problems or substantial time delays for the BLM" (Order at 2). In Newman Partnership the court stated: "As in Conway, there is no question that plaintiff is qualified to receive a lease, there is no indication of fraud and BLM had no problem determining the identity of the applicant" (Order at 6).

Appellant observes that the Board has followed these cases in Edward F. Scholls, 93 IBLA 138 (1986), in which the mismatch occurred because the applicant had darkened one circle incorrectly under his social security number on one part of the application. 1/ He urges "that the District Courts' interpretation be applied to the mismatched numbers occurring in the present case as well, since it is all part of the same criterion which must be met to constitute acceptability," i.e., 43 CFR 3112.3(a)(2) (Statement of Reasons at 9).

BLM responds that the facts in those cases are different than in this one, and suggests the controlling case is KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985), where BLM's rejection of an application because of the applicant's failure to include on his application a serial number that referred to his qualifications on file with BLM was affirmed on the grounds that the rule was reasonably related to the statutory requirement that leases be awarded only to the first qualified applicant. Appellant's use "of the identification number of another person, who has a Part A on file with the BLM, is the legal equivalent of filing a Part B with no identification number at all," BLM argues, Answer at 5, and quotes the statement

1/ It is not clear from the opinion in Scholls whether this occurred on Part A or Part B. Appellant's statement of reasons said the mistake occurred in filling in the circles on Part A, see 93 IBLA at 138; the Board stated the Part A form contained correctly marked social security number bubbles, but one of the bubbles on the Part B form was incorrectly marked. 93 IBLA at 140.

in KVK Partnership that "requiring the applicant to supply either its qualifications or the serial number with the drawing card facilitated a speedy and efficient determination of a drawee's qualifications * * * a requirement reasonably related to a legitimate goal." 759 F.2d 814, at 816. Appellant's use of his identification number on his father's application prevented BLM from speedily and efficiently determining the applicant's qualifications, BLM suggests, because it is the identification number, not the applicant's name, that connects Parts A and B (Answer at 5-6). See Edward F. Scholls, supra at 140.

[1] Since Conway we have analyzed defects in simultaneous oil and gas lease applications carefully to determine whether considering them a per se disqualification furthers a statutory purpose. See, e.g., CNG Producing Company, 102 IBLA 210 (1988) (failure to submit sufficient remittance with the application not a non-substantive defect); Jack Williams, 91 IBLA 335, 93 I.D. 186 (1986) (signing the application in pencil, rather than in ink, a non-substantive error); Edward F. Scholls, supra.

We said in Scholls, however, that following the decisions in Rocky Mountain and Newman Partnership

> does not mean the Board will apply the Conway rationale to all defects in simultaneous oil and gas lease applications. Indeed, as the court observed in Brick v. Andrus, 628 F.2d 213, 2[16] (D.C. Cir. 1980), "the Secretary can properly adopt per se rules if he deems them useful in the administration of the [simultaneous leasing] program -- even rules the application of which may at times yield results that appear unnecessarily harsh." The meaning of this principle is further explained in KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985), where the court observes that its Conway opinion must be limited by the consideration that: "[W]e did not hold that the agency may never adopt per se requirements. Read in light of its facts, Conway holds only that a BLM regulation may not be per se grounds for disqualification if it does not further a statutory purpose." Id. at 816.

93 IBLA at 141. We then concluded that "[i]n the case of mismatched identification numbers * * * the Department apparently has determined that there is no longer a statutory purpose to be served to require a per se rule disqualifying successful applications which contain mismatched numbers." Id. 2/

2/ This statement was based on the fact that the Solicitor elected not to appeal the Rocky Mountain and Newman Partnership decisions, in part on the grounds that "the automated system has been refined so that mismatched BANs [Bureau applicant numbers] on Parts A and B will now be discovered and the application returned to the applicant before the random selection of applicants occurs. Thus, the situations which allowed the application in these two cases to be selected before the mismatches were detected are not likely to reoccur." Id. at 140-41.

This, however, is not a "mismatch" case, i.e., a case where the applicant errs when filling in the bubbles or transcribing his identification number on Part A or B. It is a case in which the applicant (albeit via the inadvertence of his assistant) did not enter his identification number on Part B of the application. Rather, he entered an incorrect identification number that happened to be someone else's identification number. In other cases with similar circumstances we have affirmed BLM's rejection of the application. In Joan Chorney, 79 IBLA 271 (1984), the identification number entered on Part B was that of the applicant's daughter Jane. Although the application was selected, BLM rejected it because of the discrepancy. The Board affirmed, modifying the BLM decision on the basis of Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), to deem the application unacceptable rather than rejected, and stating:

> Without compliance with the directive that the identification number on Part B filings be consistent with the Part A filing on record, the application cannot be distinguished as distinctly that of the applicant. The rule requiring proper completion of the approved application form promotes the efficient administration of the simultaneous oil and gas leasing program in view of the number of applications submitted.

79 IBLA at 273.

Similarly, in Stella O. Redpath, 80 IBLA 174 (1984), we affirmed a BLM decision rejecting an application (and modified the decision to deem the application unacceptable) because the applicant entered an identification number on Part B that had been assigned to her husband and that differed from the number on her Part A. There we stated that "[e]ntry of the appropriate identification number in a form which is machine readable (by darkening the appropriate circles) is required to relate the successful application to the applicant whose name and address appear on Part A of the application on file * * *. Without using the same number as used in Part A, Part B cannot be efficiently processed." 80 IBLA at 177-78.

The per se disqualification of a lease applicant is appropriate where the failure to complete an application in accordance with the applicable regulations and instructions on the application form adversely affects the Department's ability to establish the applicant's qualifications or to protect the integrity of the simultaneous leasing system. CNG Producing Co., supra at 211; Jack Williams, supra at 340, 93 I.D. at 189. Both reasons apply in a case such as this. Where the applicant enters an incorrect identification number in the circle on Part B, the Department cannot readily determine if he is the first qualified applicant, as the statute requires it to do before awarding a lease. 30 U.S.C. § 226(b) (1982). Further, although there is no indication of fraud in this case, if an applicant who entered an incorrect identification number on his Part B were not disqualified, he might increase his chances of success by employing an incorrect

identification number in the hope that it would correspond to someone else's and arguing there was merely a "mismatch" if the incorrect number were selected. 3/

Unlike Rocky Mountain and Newman Partnership, the mistake in this case did cause BLM inconvenience and did present it a problem in determining the identity of the applicant. Because appellant's identification number was entered on Part B, BLM prepared an offer to lease and a receipt in his name, rather than the applicant's, before it discovered he was not the applicant. Requiring the applicant to enter his own identification number on Part B of the application enables BLM to accurately and automatically coordinate between Part B and Part A. Failure to comply with this requirement impedes the efficient determination of the first qualified applicant and such a failure warrants a per se disqualification. KVK Partnership v. Hodel, supra.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

3/ In theory this stratagem could not succeed because the computer would detect the presence of two (or more) identical identification numbers on the Part B applications and reject them as multiple filings. In fact it did not detect them in this case, however, where they were employed by A. W. Rutter, Jr., once for himself and again, mistakenly, for his father. See BLM Answer to Statement of Reasons at 3; Reply to Agency Answer at 2.